



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/780,618	02/12/2001	Martin Sommer	SGW-109	9111
23599	7590	11/14/2008	EXAMINER	
MILLEN, WHITE, ZELANO & BRANIGAN, P.C. 2200 CLARENDON BLVD. SUITE 1400 ARLINGTON, VA 22201				CHEVALIER, ALICIA ANN
1794		ART UNIT		PAPER NUMBER
MAIL DATE		DELIVERY MODE		
11/14/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/780,618	SOMMER ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	ALICIA CHEVALIER	1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 28 July 2008.

2a) This action is **FINAL**.                  2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 30,31,33-51 and 53-70 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 30,31,33-51 and 53-70 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____ .

**RESPONSE TO AMENDMENT**

1. Claims 30, 31, 33-51 and 53-70 are pending in the application, claims 1-29, 32 and 52 have been cancelled.
2. Amendments to the claims, filed on July 28, 2008, have been entered in the above-identified application.

***REJECTIONS REPEATED***

3. The 35 U.S.C. §102 rejection of claims 30, 31, 33-51 and 53-70 over Christiansen (US Patent No. 5,490,965) is repeated for reasons previously made of record in the office action mailed March 28, 2008, pages 2-6, paragraph #5.

***REJECTIONS***

4. **The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.**

***Claim Rejections - 35 USC § 112***

5. Claims 30, 31, 33-51 and 53-70 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In the instant case amended claims 30, 31, 33-51 and 53-70 contain the

limitation "solid article" and "solid sealing element." The only support in the specification for "solid" anything is on page 8, line 3, where it recites "welding by solid elements." Therefore, the limitations "solid article" and "solid sealing element" are considered to be new matter.

The new matter should be deleted.

6. Claims 30, 31, 33-51 and 53-70 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The limitations "solid article" and "solid sealing element" in claims 30, 31, 33-51 and 53-70 are unclear and render the claims vague and indefinite. It is unclear from the claims and the specification what constitutes "solid."

#### ***ANSWERS TO APPLICANT'S ARGUMENTS***

7. Applicant's arguments in the response filed July 28, 2008 regarding the 35 U.S.C. 102 rejection over Christiansen of record have been carefully considered but are deemed unpersuasive.

Applicant argues that the rejection over Christiansen is maintained even though the description in the instant application and the references previously filed establish that the products are made by different methods would result in physically different products.

As stated in previous office actions, the method of making a product does not determine the patentability of the product, unless the process produces unexpected results. The method of forming the product is not germane to the issue of patentability of the product itself, unless Applicant presents evidence from which the Examiner could reasonably conclude that the

claimed product differs in kind from those of the prior art. MPEP 2113. Furthermore, Attorney argument is not evidence unless it is an admission, in which case, an examiner may use the admission in making a rejection. See MPEP 2129 and 2144.03 for a discussion of admissions as prior art. The arguments of counsel cannot take the place of evidence in the record. See MPEP 716.01(c) for examples of attorney statements which are not evidence and which must be supported by an appropriate affidavit or declaration. MPEP 2145. Applicant has not provided any evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art, due to the method manufacture.

Applicant further argues that the reference filed on May 15, 2003, November 26, 2003 and May 10, 2004 establish that only the contact surfaces of the solid sealing element and the solid article are modified during the welding process in such a way, that the contact surface of the molded element and the contact surface of the solid sealing element are permanently bonded together in such a way that the opening is hermetically sealed.

Applicant's references are excerpts from the Principles of Welding and Pressure Welding Machines, which not an appropriate affidavit or declaration presenting evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. Furthermore, fact that only the contact surfaces of the solid sealing element and the solid article are modified during the welding process in such a way, that the contact surface of the molded element and the contact surface of the solid sealing element are permanently bonded together in such a way that the opening is hermetically sealed in not in the specification or claims. Applicant has not established that the products of the prior art and the claims are physically different.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (571) 272-1490. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye, can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

Art Unit: 1794

system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Alicia Chevalier/  
Primary Examiner, Art Unit 1794  
11/14/2008